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FACTS: ABOUT:

U.S. DEPT. OF AGRICULTURE
MARKETING SERVICE

THE FOOD RETAILER AND PACA

MAY 26 1980

The Perishable Agricultural Commodities Act establishes rules of fair trade so that those who buy and sell fresh and frozen fruits and vegetables may trade with confidence. PACA does not tell buyers and sellers what kind of contracts they can make. But it does say that once a contract is made, both sides must carry out their bargain.

Congress passed PACA after representatives of the produce industry showed the need for a special law to curb abuses in marketing perishable fruits and vegetables.

The buyer or seller must depend on the good faith of the other party to the contract, particularly because many contracts are made by telephone. Most perishable products cannot be held on track or in a truck or stored while a dispute is being settled.

Who needs a PACA license?

PACA requires all commission merchants, brokers, and dealers who buy, sell, or handle fresh or frozen fruits and vegetables in interstate or foreign commerce to be licensed. The cost of a license for a firm operating up to nine branches or other business locations is \$135. A firm would pay an additional \$35 for every branch or location above nine, up to a maximum of \$1,000.

The license is good as long as the annual fee is paid, unless it is suspended or revoked by the U.S. Department of Agriculture. The penalty for operating without a license is up to \$500 for each offense and up to \$25 for each day the offense continues.

The license fees pay for the administration of the Act by the Fruit and Vegetable Division of USDA's Agricultural Marketing Service.

How does PACA affect retailers?

Everybody in the fruit and vegetable industry--shippers, commission merchants, brokers, and dealers (including truckers, jobbers, retailers, and wholesalers)--must observe the fair trading rules as spelled out under PACA. However, in their capacity as wholesale buyers, retailers are one of the most important links in the distribution chain for fresh and frozen produce. As wholesale buyers, retailers are considered to be dealers under the Act.

Retailers, like other suppliers, must live up to their contracts. Complaints under PACA have been filed by retailers against suppliers, and vice versa.

Do all retailers need PACA licenses?

A retailer must get a license if these two conditions exist:

- It buys more than \$200,000 worth of fresh and frozen fruits and vegetables during a calendar year. All purchases of these commodities are counted, regardless of the size of the lot or whether the transaction was in interstate, intrastate, or foreign commerce.

- It operates as a dealer. Dealers under PACA include shippers, wholesalers, retailers, truckers, and processors who buy or sell produce in interstate or foreign commerce, in wholesale or jobbing quantities. A wholesale or jobbing quantity under PACA is defined as aggregate quantities of 1 ton (2,000 pounds) or more of fresh and frozen fruits and vegetables shipped or received, or contracted to be shipped or received, during any day. This definition applies to all dealers-- truckers, jobbers, and wholesalers, as well as retailers.

The Federal courts say interstate commerce is not limited to the transaction which moves the goods from one State to another. There may be one or more transactions before a lot is shipped from the State of origin or after it arrives within the State of destination. These are part of interstate commerce. For example, the sale of Washington apples by one dealer in Chicago to another dealer in Chicago is interstate commerce. So even though a retailer may purchase only from a local wholesaler, if the products originated in another State, that purchase is a part of interstate commerce.

Does each store in a chain need a license?

Each independent supermarket operator subject to PACA must get a license, while a corporate chain with several outlets needs to have only one license for its entire organization.

PACA provides for licensing each person carrying on the business of a commission merchant, dealer, or broker, as these terms are defined in the Act. The term person includes individuals, partnerships, corporations, and associations, which means each separate legal entity. Under the law, a corporation is a person or legal entity in the same way that an individual proprietorship or a partnership is defined as a person.

When a complaint is filed against a licensee under PACA, it involves the entire firm's operation. Therefore, a complaint against a retailer operating more than one store would be a complaint against the entire firm and not against a single store.

What happens if PACA violations occur?

Anyone doing business under PACA must have a license, which may be taken away for violations.

Practically all complaints under PACA claim damage because a licensee broke a contract. USDA officials investigate each complaint and based on the findings, try first to reach a fair and friendly settlement. If this cannot be done, USDA will accept a formal complaint, give both persons opportunity to submit testimony and evidence, and then make a decision based on these facts.

In its decision, USDA either dismisses the complaint or orders one of the persons to pay damages. If payment is not made or the order not appealed to court within 30 days, the person's license is automatically suspended, and business cannot be conducted under the Act.

For more information

Contact any of the following offices of the Regulatory Branch, Fruit and Vegetable Division, AMS, USDA:

Rm 2095-So. Bldg.
Washington, D.C. 20250
Phone: (202) 737-4118 (long distance)
or 447-3212 (complaints, local)
or 447-2189 (licenses, local)

U.S. Customs House, Rm. 1119
Chicago, Ill. 60607
Phone: (312) 922-0328 (long distance)
or 353-6220 (local)

819 Taylor St., Rm. 9C03
Fort Worth, Tex. 76102
Phone: (817) 335-1630 (long distance)
or 334-2624 (local)

Rm 520, Linder Bldg.
845 S. Figueroa St.
Los Angeles, Calif. 90017
Phone: (213) 628-7766 (long distance)
or 688-3194 (local)

26 Federal Plaza, Rm. 1641
New York, N.Y. 10007
Phone: (212) 732-3193 (long distance)
or 264-1118 (local)

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